

Nos. 11-56986, 12-55429

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SGT. JEFFREY S. SARVER,

Plaintiff and Appellant,

v.

NICHOLAS CHARTIER, et al.

Defendants and Appellees.

On Appeal from the United States District Court, Central District of California
The Honorable Jacqueline H. Nguyen
Case No. 2:10-CV-09034 JHN (JCx)

**DECLARATION OF KELLI L. SAGER IN SUPPORT OF MOTION FOR
LEAVE TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF
OF THE MOTION PICTURE ASSOCIATION OF AMERICA, INC. AND
ENTERTAINMENT MERCHANTS ASSOCIATION IN SUPPORT OF
DEFENDANTS/APPELLEES**

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DECLARATION OF KELLI L. SAGER

I, Kelli L. Sager, declare:

1. I am an attorney licensed to practice law before all the courts of the State of California and before this Court. I am a Partner in the law firm of Davis Wright Tremaine LLP, counsel of record for amici curiae Motion Picture Association of America, Inc. (“MPAA”) and Entertainment Merchants Association (“EMA”) (collectively “Amici”). The matters stated below are true of my own personal knowledge, and, if called to testify, I could and would competently testify to these matters.

2. On August 27 and 28, 2012, I sent emails to Michael R. Dezsi, Nathan Dooley and Erik Jackson (counsel for plaintiff-appellant Jeffrey Sarver (“Appellant”)) and to David Halberstadter, Timothy Gorry, Jon-Jamison Hill, Dale Kinsella, Jeremiah Reynolds, and Rebecca Ganz (counsel for defendant-appellees Nicholas Chartier, Summit Entertainment, LLC, Playboy Enterprises, Inc., Kathryn Bigelow, The Hurt Locker LLC, Mark Boal, Greg Shapiro, Voltage Pictures, LLC, Grosvenor Park Media, LP, Kingsgate Films, Inc., Tony Mark, Donall McKusker, and First Light Productions Inc. (collectively, “Appellees”)), notifying them of MPAA’s intent to seek leave of this Court to file an amicus brief in this matter, and inquiring whether their respective clients would oppose MPAA’s request.

3. Pursuant to an inquiry from Appellant's counsel, including Todd Weglarz (to whom my email had been forwarded), I explained the position that MPAA's brief would take: that the First Amendment protects motion pictures about (or inspired by) real people, and the brief will ask the Court to find either that misappropriation claims based on such films are constitutionally barred, or at minimum, to find that the proper test to be applied is the Rogers/Restatement test.

4. On August 28, 2012, I heard from representative counsel for each of the Appellees responded to my email, confirming that none of the Appellees oppose MPAA's motion.

5. That same day, I emailed all counsel listed above again, advising them that the Entertainment Merchants Association had asked to join MPAA's brief, and inquiring whether that would change their positions. I also reiterated my request to Appellant's counsel to let me know their position on the proposed Amici brief.

6. Counsel for Appellant Michael Deszi then responded to my email inquiry, stating that he opposes Amici's motion because it is not his client's interest to agree to it.

7. None of the counsel for Appellees changed their position in response to my inquiry about adding EMA to our proposed Amici brief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on this 29th day of August, 2012, in Los Angeles, California.


Kelli L. Sager

9th Circuit Case Number(s) 11-56986, 12-55429

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

August 29, 2012

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

See Attached Service List.

Signature (use "s/" format)

/s/ Gino M. Pasquale

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